

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 2038

INTRODUCER: Health Regulation Committee and Senator Crist

SUBJECT: Medicaid buy-in for persons with disabilities

DATE: March 26, 2010

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Bell | Wilson | HR | Fav/CS |
| 2. | | | CF | |
| 3. | | | HA | |
| 4. | | | WPSC | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The Committee Substitute (CS) for SB 2038 establishes new Medicaid “buy-in” coverage for working disabled individuals, ages 16 through 64, who would be eligible for Supplemental Security Income (SSI) if earnings equal to 250 percent of the Federal Poverty Level (FPL) were disregarded, and unearned income did not exceed 88 percent of the FPL. A participant in the Medicaid buy-in program must be charged a premium based on a sliding scale once the participant’s earned income exceeds 100 percent of the FPL. Assets excluded, in addition to SSI, are: cash assets in the amount of \$12,000 for a single individual and \$18,000 for a couple; any retirement account recognized by the Internal Revenue Service; and a second vehicle for a couple. The Medicaid buy-in program is subject to federal authorization and the availability of state and federal funds.

The bill provides the Department of Children and Family Services (DCF) with authority to adopt rules for the eligibility determination of Medicaid buy-in program applicants. The Department of Health (DOH) is designated as the entity that will determine eligibility for the Medicaid buy-in program.

The bill designates the Agency for Health Care Administration (AHCA) as the agency responsible for establishing and administering the Medicaid buy-in program. In addition, the AHCA is directed to seek amendments to existing Medicaid waivers that serve persons with disabilities to allow those who are eligible under the proposed Medicaid buy-in program to be eligible to receive services provided under Medicaid waivers serving persons with disabilities.

The bill amends s. 409.904, F.S., and creates an undesignated section of law.

II. Present Situation:

Florida Medicaid Program

Florida's Medicaid Program is jointly funded by the federal, state, and county governments to provide medical care to eligible individuals. Florida implemented its Medicaid program on January 1, 1970, to provide medical services to indigent people. The AHCA is the single state agency responsible for the Florida Medicaid Program.¹

Some Medicaid services are mandatory services that must be covered by any state participating in the Medicaid program pursuant to federal law.² Other services are optional. A state may choose to include optional services in its state Medicaid plan, but if included, such services must be offered to all individuals statewide who meet Medicaid eligibility criteria as though they are mandatory benefits.³ Similarly, some eligibility categories are mandatory⁴ and some are optional.⁵ Payments for services to individuals in the optional eligibility categories are subject to the availability of monies and any limitations established by the General Appropriations Act or ch. 216, F.S. For fiscal year 2010-2011, the Florida Medicaid Program is projected to cover 2.9 million people⁶ at an estimated cost of \$19.1 billion.⁷

Medicaid Buy-In Programs

The working disabled or disabled persons who desire to attempt employment have limits on the amount of income they may earn in order to maintain their Medicaid benefits. This may create a disincentive to employment. To address this problem, legislation enacted by Congress in 1999 provided states the option and flexibility to allow people with disabilities to join the workforce without loss of their Medicaid coverage by allowing individuals with disabilities who work to "buy in" to a state's Medicaid program. This Medicaid buy-in program is based on the Ticket to Work and Work Incentives Improvement Act (TWWIIA),⁸ which permits states to set more liberal income and asset limits for eligibility purposes.

In 2006, 32 states were operating a Medicaid buy-in program and 97,491 individuals were enrolled at some point during that year.⁹

Florida's Medicaid Buy-In Program

Florida has had variations of Medicaid buy-in programs for several years. Florida established the Assistance for the Uninsured program in 1991.¹⁰ The program required the department¹¹ to use

¹ The statutory provisions for the Medicaid program appear in ss. 409.901-409.9205, F.S.

² These mandatory services are codified in s. 409.905, F.S.

³ Optional services covered under the Florida Medicaid Program are codified in s. 409.906, F.S.

⁴ Section 409.903, F.S.

⁵ Section 409.904, F.S.

⁶ Social Services Estimating Conference, Medicaid Caseload, January 26, 2010. Found at: <<http://edr.state.fl.us/conferences/medicaid/medcases.pdf>> (Last visited on March 22, 2010).

⁷ Social Services Estimating Conference, Medicaid Services Expenditures, February 12, 2010. Found at: <<http://edr.state.fl.us/conferences/medicaid/medhistory.pdf>> (Last visited on March 22, 2010).

⁸ Public Law 106-170.

⁹ The Three E's: Enrollment, Employment, and Earnings in the Medicaid Buy-In Program, 2006. Found at: <http://www.mathematica-mpr.com/publications/pdfs/EEE_FinalReport_Apr2008.pdf> (Last visited on March 22, 2010).

¹⁰ Section 409.914, F.S.

¹¹ Then the Department of Health and Rehabilitative Services.

its claims payment systems, utilization control systems, cost control systems, case management systems, and other systems and controls that it had developed for the management and control of the Medicaid program to assist other agencies and private entities to solve problems of lack of insurance, underinsurance, or uninsurability in the general population.

In 1993, the department¹² was charged with seeking federal authority to implement a Medicaid buy-in program to provide medical assistance to persons ineligible for Medicaid because of then current income and categorical restrictions. The department was required to use funds provided by the Robert Wood Johnson Foundation to assist in developing the buy-in program, including, but not limited to: the determination of eligibility and service coverages; cost sharing requirements; managed care provisions; and changes needed to the Medicaid program's claims processing, utilization control, cost control, case management, and provider enrollment systems to operate a buy-in program. The buy-in program was charged with providing medical assistance coverage for persons with incomes up to 250 percent of the FPL. However, the department was prohibited from implementing a buy-in program until it received necessary federal authorization and state appropriations. No funds were allocated and the program was not implemented, even though it is still authorized in s. 409.914(2), F.S.

In 2002, Florida chose to fund and implement a Medicaid "buy-in" program effective April 1, 2002, for disabled individuals who had earned income, after established disregards, that did not exceed 250 percent of the FPL and who met other existing factors of eligibility. The program was eliminated effective July 1, 2002, as a result of the 2002 Special Legislative Session. The total enrollment for the program during this three-month period was 19 individuals. This low enrollment may be attributed to the fact that potentially eligible individuals were informed upfront that the benefits would only be provided for a three-month period.

Agency for Persons with Disabilities

Under s. 20.197, F.S., the Agency for Persons with Disabilities (APD) is housed within the DCF for administrative purposes. The APD is responsible for providing all services provided to persons with developmental disabilities under ch. 393, F.S., including the operation of all state institutional programs and the programmatic management of Medicaid waivers established to provide services to persons with developmental disabilities.¹³ As of September 2009, 29,786 individuals were enrolled in the Developmental Disabilities Medicaid waiver programs administered by the APD and 18,961 individuals were on the wait list.¹⁴

Since January 2006, Florida has received funding each year from the Centers for Medicare and Medicaid Services through a MIG, and the APD has been the state agency administering the grant.¹⁵ The purpose of the grant is to support the State's efforts to enhance employment options for people with disabilities by building Medicaid infrastructure. Funding may be used to develop a Medicaid buy-in program, increase availability of Personal Assistance Services, plan a

¹² The Department of Health and Rehabilitative Services.

¹³ Section 20.197, F.S.

¹⁴ Office of Program Policy Analysis and Government Accountability, Profile of Florida's Medicaid Home and Community-Based Services Waivers, Report No. 10-10, January 2010. Found at: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1010rpt.pdf> (Last visited on March 22, 2010).

¹⁵ MIG, Research Assistance to States, 2010 MIG and Buy-In States. Found at: <http://www.migrats.org/Home.aspx> (Last visited on March 22, 2010).

Demonstration to Maintain the Independence and Employment Program, or for State-to-State technical assistance.¹⁶ In addition, States may use funding to develop a comprehensive approach to bridge Medicaid services with other key supports and programs used by employed people with disabilities.

In Florida, the MIG funding has been used to collaborate with other agencies and organizations in an attempt to implement a Medicaid buy-in program to make health insurance available for purchase by workers with disabilities, to conduct studies and report on conditions that affect the ability of Floridians with disabilities to work, and to fund other projects that support employment within the scope of the grant.¹⁷

Department of Children and Family Services

The DCF is the entity responsible for determining the financial eligibility of applicants for government assistance, including most Medicaid eligibility categories. In addition, the DCF administers the Aged and Disabled program, through a Home and Community Based Services (HCBS) Medicaid waiver, to assist low income adults between the ages of 18 and 59 years of age who have one or more permanent physical or mental limitations that restrict their ability to perform one or more activities of daily living.¹⁸

This program uses Medicaid funds to serve disabled adults who are unable to care for themselves and are eligible for nursing home placement. The program makes available such services as personal care, home-delivered meals, homemaker service, and adult day care, which allow clients to remain in their homes instead of in nursing homes.¹⁹

The Medicaid Waiver administered by the DCF serves disabled adults ages 18-59. As of December 2009, the DCF served 904 individuals through the Medicaid Waiver program and had 3,732 individuals on the waitlist.²⁰ The Department of Elder Affairs is responsible for administering the HCBS Aged and Disabled Medicaid waiver for adults age 60 and older.

Department of Health

The DOH is responsible for administering the Adult Cystic Fibrosis and the Traumatic Brain and Spinal Cord Injury HCBS Medicaid waiver programs. As of December 2009, the Adult Cystic Fibrosis waiver program had 97 individuals enrolled, with 23 persons on the waitlist.²¹ As of

¹⁶ Agency for Persons with Disabilities, Medicaid Infrastructure Grant. Found at: <<http://www.apd.myflorida.com/mig/>> (Last visited on March 22, 2010).

¹⁷ Agency for Persons with Disabilities, Medicaid Infrastructure Grant. Found at: <<http://www.apd.myflorida.com/mig/>> (Last visited on March 22, 2010).

¹⁸ Agency Sunset Review of the Department of Children and Family Services, *The Florida Senate Issue Brief 2009-304*, January 2009, page 25. Found at: <http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-304cf.pdf> (Last visited on March 22, 2010).

¹⁹ Office of Program Policy Analysis and Government Accountability, Profile of Florida's Medicaid Home and Community-Based Services Waivers, Report No. 10-10, January 2010. Found at: <<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1010rpt.pdf>> (Last visited on March 22, 2010).

²⁰ Office of Program Policy Analysis and Government Accountability, Profile of Florida's Medicaid Home and Community-Based Services Waivers, Report No. 10-10, January 2010. Found at: <<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1010rpt.pdf>> (Last visited on March 22, 2010).

²¹ Office of Program Policy Analysis and Government Accountability, Profile of Florida's Medicaid Home and Community-Based Services Waivers, Report No. 10-10, January 2010. Found at: <<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1010rpt.pdf>> (Last visited on March 22, 2010).

December 2009, the Traumatic Brain and Spinal Cord Injury waiver program had 327 individuals enrolled, with 605 persons on the waitlist.

Through a Memorandum of Understanding among the DCF, the federal Social Security Administration, and the DOH, the Division of Disability Determination within the DOH is also responsible for the medical eligibility determination for federal SSI status and the state Medicaid Medically Needy program.²² Applications for SSI determination and Medically Needy determination are forwarded to the DOH for review. Once the DOH determines medical eligibility, the application is forwarded back to the Social Security Administration or the DCF for final determination of non-medical eligibility. The DOH has an annual budget of approximately \$89 million and 972 staff to administer its eligibility determination responsibilities.²³

Division of Vocational Rehabilitation

Under s. 413.201, F.S., the Florida Division of Vocational Rehabilitation is located within the Department of Education, and is the designated state agency to effect compliance with the Vocational Rehabilitation Act of 1973. The Division provides the services that are required for eligible customers to achieve an employment goal, with priority placed on serving the customers with the most significant disabilities.

According to the Division of Vocational Rehabilitation, in state fiscal year 2008-09, over 8,000 persons with disabilities entered gainful employment in jobs with an average hourly wage of \$12.00.²⁴ Those disabilities included: chronic medical conditions; developmental disabilities; learning disabilities; mental health disorders; orthopedic conditions; sensory impairments; and substance abuse issues.

III. Effect of Proposed Changes:

The CS/SB 2038 amends s. 409.904, F.S., to specify that, subject to federal authorization and the availability of state and federal funds, a person may be eligible for Medicaid services as part of a Medicaid buy-in program specifically designed to accommodate those persons made eligible for such a buy-in program by Title II of Pub. L. No. 106-170, if the person:

- Is determined to be disabled and who, but for earnings, would be considered eligible for supplemental security income;
- Has countable earnings, taking into account supplemental security income and earned income disregards, which do not exceed 250 percent of the FPL and whose unearned income does not exceed 88 percent of the most current FPL; and
- Has attained 16 years of age but is younger than 65 years of age.

²² Department of Health, Bill Analysis, Economic Statement, and Fiscal Note for SB 2038, on file with the Health Regulation Committee staff.

²³ Florida Department of Health, Division of Disability Determinations. Found at: <http://www.doh.state.fl.us/DD/DDdescription.html> (Last visited on March 22, 2010).

²⁴ Florida Rehabilitation Council, *Florida Division of Vocational Rehabilitation 2008-09 Annual Report*. Found at: http://www.rehabworks.org/Files/DocumentsLinks/08_09%20FRC%20Annual%20Report.pdf (last visited March 22, 2010).

A participant in the Medicaid buy-in program must be charged a premium based on a sliding scale once the participant's earned income exceeds 100 percent of the FPL. Assets excluded, in addition to those excluded under the supplemental security income program, are as follows:

- Cash assets in the amount of \$12,000 for a single individual and \$18,000 for a couple;
- Any retirement account recognized by the Internal Revenue Service; and
- A second vehicle for a couple.

The bill authorizes the DCF to adopt rules for determining Medicaid buy-in eligibility. The bill specifies that the DOH will be responsible for the disability determination process for individuals seeking to enroll in the Medicaid buy-in program.

The bill designates the AHCA as the agency responsible for establishing and administering the Medicaid buy-in program. In addition, the AHCA is required to seek amendments to Medicaid waivers serving persons with disabilities to provide that persons who are eligible for Medicaid under a Medicaid buy-in program authorized under s. 409.904(10), F.S., may be eligible for services under waivers if they otherwise meet the level of care qualifications for services under such a waiver.

The effective date of the bill is July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The finding and purposes section of the TWWIIA states that, "for individuals with disabilities, the fear of losing health care and related services is one of the greatest barriers keeping the individuals from maximizing their employment, earning potential,

and independence.”²⁵ The bill creates a Medicaid buy-in program that may encourage more disabled Medicaid recipients to enter the workforce.

C. Government Sector Impact:

The Agency for Health Care Administration

The bill requires the AHCA to amend its Medicaid waivers that serve persons with disabilities to allow those who are eligible under the proposed Medicaid buy-in program to be eligible to receive services under a disabled waiver program if they meet the waiver’s level of care qualifications. This provision extends waiver eligibility to disabled individuals who do not qualify for waiver services because their income or assets are too high. The expansion of Medicaid eligibility would increase costs to the Medicaid program if more individuals enrolled.

The AHCA estimates that the Medicaid buy-in program would increase the Medicaid caseload by 1,000 person in the first year of implementation (FY 2011-2012), with an estimated service cost of \$4,345.78 per person per year. The total Medicaid cost for the Medicaid buy-in program in fiscal year 2011-2012 would be \$4,345,780 with \$1,889,980 being general revenue and \$2,455,800 being Medical Care Trust Fund (federal funds).²⁶

The AHCA Medicaid buy-in costs

| | FY 2010-2011 | FY 2011-2012 |
|---------------------------|---------------------|---------------------|
| State | \$36,265 | \$1,924,693 |
| General Revenue | | |
| Medical Care Trust | \$36,265 | \$2,490,513 |
| Fund | | |
| Total | \$72,530 | \$4,415,206 |

* Does not include the cost of administering the Medicaid buy-in program.

The AHCA will incur an additional fiscal impact to administer the Medicaid buy-in program, including contracted services and an additional FTE to manage the outsourcing of the premium collection beginning July 2, 2010.

The Department of Health

The bill requires the DOH to provided Medicaid buy-in eligibility determination. The DOH estimated that it would need two additional FTEs for the additional eligibility determination caseload (1,000 estimated) and funding to obtain medical evidence for individuals applying for the Medicaid buy-in program.

²⁵ 42 U.S.C. 1320b-19.

²⁶ Based on other states’ experience the AHCA assumed that 70 percent of the Medicaid buy-in caseload would be dual eligibles.

The DOH Medicaid buy-in costs

| | FY 2010-2011 | FY 2011-2012 |
|---------------------------|---------------------|---------------------|
| State | \$126,102.10 | \$122,225.10 |
| General Revenue | | |
| Medical Care Trust | \$126,102.10 | \$122,225.10 |
| Fund | | |
| Total | \$252,204.20 | \$244,450.20 |

* Does not include the cost of administering the Medicaid buy-in program.

The Department of Children and Family Services

Under a Medicaid buy-in program, the DCF would incur a cost to create a new program coverage category in the FLORIDA system and two additional FTEs to handle Medicaid case load growth and Medicaid buy-in program administrative responsibilities that would include Medicaid buy-in eligibility determination and disenrollment administrative hearing challenges.

Many states have had trouble estimating buy-in participation.²⁷ Participation generally varies based on current Medicaid eligibility, the cost of buy-in premiums, and Medicaid buy-in enrollee requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 52-55 of the bill allow an individual to participate in the Medicaid buy-in program and pay a premium based on a sliding scale of the individual's income. The bill does not specify the amount of the premium; what income is used to calculate the premium charged to the participant; how the premium will be collected; or how the collected premiums will be handled, saved, or distributed.

According to the AHCA, it will not be feasible to implement a Medicaid buy-in program by July 1, 2010, the implementation date in the bill. The AHCA has indicated it will take at least 15 months to fully implement a Medicaid buy-in program.

Medicaid Waivers

According to the AHCA, the bill requires the AHCA to amend 11 HCBS waivers that provide services to disabled persons. This would expand eligibility for all 11 waivers and most of the HCBS waivers have a waitlist. It is unclear how the Medicaid buy-in program would interface with the other 11 HCBS programs.

The bill would require the AHCA to amend its Medicaid state plan to expand Medicaid eligibility. The bill does not provide the AHCA with this authority.

²⁷ Developing Fiscal Estimates for a Medicaid Buy-in program: Using Data from the Early Implementer States, Center for Health Services Research and Policy George Washington University. Found at: <www.uiowa.edu/~lhpdc/work/II_Policies/Estimating_Fiscal_Impact.doc> (Last visited on March 22, 2010).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on March 26, 2010:

- Provides that the establishment of a Medicaid buy-in program is subject to the availability of state and federal funds.
- Designates the AHCA as the agency responsible for establishing and administering the Medicaid buy-in program.

- B. **Amendments:**

None.